

**Mayor and Councillors**  
COUNCIL

9 NOVEMBER 2017

Meeting Status: **Public**

Purpose of Report: For Decision

## **COUNCIL DECISIONS ON SUBMISSIONS TO THE PROPOSED KAPITI COAST DISTRICT PLAN AND VARIATION 1 URBAN TREE VARIATION**

### **PURPOSE OF REPORT**

- 1 This report seeks that the Council adopts the recommended decisions of the Independent Hearing Panel on submissions and further submissions made on the Proposed Kapiti Coast District Plan 2012 and Variation 1 Urban Tree Variation.

### **DELEGATION**

- 2 Only the Council has the authority to consider this matter.

### **BACKGROUND**

- 3 The Panel Chair, Alistair Aburn and the other Panel members will be attending the Council meeting on 9 November 2017 and will be available to answer questions with regard to the Panel's Reports and Recommendations.
- 4 The Proposed District Plan project has been underway since 2008. A brief summary of the project up to this point is as follows:

#### **2008 - 2012**

- Release of a District Plan Review Scoping Discussion Document and Summary providing information on 'focus areas', monitoring information and setting out processes and an expected timeline for the review process and seeking feedback (March 2010).<sup>1</sup>
- A number of studies were undertaken to help inform the Council about various aspects primarily relating to the focus areas (2007-2012).<sup>2</sup>
- There was a range of community-based meetings in 2010, and consultation and liaison with a range of people and organisations.
- Seven discussion documents were released for consultation in November 2010.

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<sup>1</sup> [www.Kapiticoast.govt.nz/Documents/Downloads/District-Plan-Review/Reports/2010/District-Plan-Review-Scoping-Document.pdf](http://www.Kapiticoast.govt.nz/Documents/Downloads/District-Plan-Review/Reports/2010/District-Plan-Review-Scoping-Document.pdf)

<sup>2</sup> [www.Kapiticoast.govt.nz/Planning/District-PlanReview/District-Plan-Review-Reports](http://www.Kapiticoast.govt.nz/Planning/District-PlanReview/District-Plan-Review-Reports)

- A range of Council workshops were held between June 2011 and November 2012.

#### **2012 - 2014**

- The Proposed Kapiti Coast District Plan (PDP) was notified on 29 November 2012. Approximately 800 submissions and 200 further submissions were received.
- Following the close of submissions and further submissions, and in response to community concerns, the Council commissioned two independent reviews, one of the Proposed District Plan coastal hazard provisions and one of the Proposed District Plan overall.
- Following receipt of the independent reviews, the Council made two decisions:
  - (a) Firstly to withdraw some provisions from the Proposed District Plan, in particular the coastal hazard provisions. On 2 October 2014 the Regulatory Management Committee resolved to “withdraw from the Proposed District Plan those parts of the maps, objectives, policies and rules relating to:
    - Coastal Hazard Management Areas;
    - Hazardous Substances and Facilities; and
    - Priority Areas for restoration.
  - (b) Secondly, the Council resolved to adopt Option 4 of the independent review panel’s report which was to continue with the Proposed District Plan process but in a manner that drew on important input from submitters and provided opportunities for further consultation with submitters.
- It is noted that following the withdrawal of these provisions the Hearing Panel had no further role in considering coastal hazard provisions.

#### **2015 - 2017**

- In June 2015 the Council released a Submitter Engagement Version (SEV) of the Proposed District Plan. This was a non-statutory document which identified a number of amendments to the November 2012 notified version. This document formed the basis of further dialogue with submitters on issues raised in the submissions.
- The Council appointed a five member Hearings Panel which comprised three independent commissioners and two KCDC Council commissioners:

Alistair Aburn (Chairperson),

Miria Pomare,

David McMahan,

Diane Ammundsen, and

Cr Mike Cardiff

Their role was to consider and make “recommended” decisions on all submissions and further submissions.

The hearings commenced on 4 April 2016 with the last hearing on 5 April 2017. This comprised 41 hearing days. Overall 218 submitters appeared and presented to the Hearings Panel.

- Variation 1 (Urban Tree) was notified on 2 September 2015. This Variation altered the types of “urban” trees to be protected in response to a change to the RMA. There were 34 submissions and one further submission to the Variation. The Hearing Panel heard submissions on Variation 1 on 11 July 2016.
- On 13 April 2017 the Council resolved to withdraw further provisions from the Proposed District Plan affected by the earlier withdrawal of provisions in October 2014 including the following:
  - Rule 4A.2.1
  - Rules 4A.3.1, 4A.3.2 and 4A.3.3
  - Rule 4A.4.2
  - Rules 4A.5.1 and 4A.5.4
  - Policy 3.14

## ISSUES AND DISCUSSION

### Issues

- 5 In December 2015 Cr Diane Ammundsen and Cr Mike Cardiff had their term as Hearing Commissioners extended until 23 December 2016. In September 2016 this period was extended again, to 30 April 2017 and then in April 2017 further extended until 31 July 2017. The Hearing Panel completed their deliberations and all of the Hearing Panel Recommendation Reports were completed in draft by the 31 July 2017 and circulated for review and approval by the Panel<sup>3</sup>.
- 6 Since the 31 July the final editing of the reports and appendices has been completed by Mr Aburn. Given that the final reports were completed after the 31 July date it is prudent for Council to further extend the delegation of Diane Ammundsen and Cr Mike Cardiff through to the end of November 2017. The appointments of the Independent Commissioners Alistair Aburn, David McMahon and Miria Pomare have no end date specified.
- 7 In accordance with Section 34 and Section 34A of the RMA Council has delegated to the Hearing Panel authority to consider all submissions received on the Proposed Kapiti Coast District Plan and to report to Council recommending whether Plan provisions are retained or amended (based upon the submissions received and the evidence heard) and the reasons why.
- 8 If the Council agrees to adopt the Hearing Panel Reports and Recommendations they will be issued as ‘Council’s decisions’ on the Proposed District Plan and Variation 1, and all submitters and further submitters will be notified of Council’s decision. The availability of a ‘Decisions Version’ of the Proposed District Plan

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<sup>3</sup> Attached as Appendix 2 are copies of the emails from D Ammundsen and Cr M Cardiff sent to A Aburn.

incorporating all Council decisions will also be publicly notified. The availability of the Council's decision will also be publicly notified in line with the requirements of the Resource Management Act 1991.

- 9 It is important to note that the recommendations of the Panel are presented to the Council after careful consideration of the submissions and further submissions and hearing extensive evidence from experts and a range of legal submissions over a 12 month period. If Council is of a mind not to accept any aspect of the report or a recommendation of the Panel, the Council would need to consider the submissions and rehear the evidence on the matter itself. This would be a lengthy process which would result in significant additional costs to Council.
- 10 Public notification of the decision is proposed for 22 November 2017. An appeal period of 30 working days will begin from the date of the public notification of the decisions for any person/s that made either a submission or a further submission.

### Overview Report

- 11 The Overview Report is a non-statutory part of the Hearing Panels Reports and Recommendations but provides a useful summary of the process the Panel have been through in hearing the submissions and further submissions and as stated in the report it is a *“high level summary that provides a “road map” to the main issues, and our findings and recommendations, addressed in the separate recommendation reports.”* The Overview report outlines the individual reports and summarises the key findings of each chapter it is not intended to be read in isolation and is not a substitute for reading the Panel's 16 Recommendation Reports.
- 12 The Overview Report and Chapter 2 – Objectives - Recommendation Report were circulated to Councillors on 16 October 2017 and the full 16 Recommendation Reports were circulated on 26 October 2017 ahead of the release of the Council agenda. The 16 Recommendations Reports are as follows:
  - *Report 1: Chapter 1 - Introduction and Interpretation (including Plan Wide)*
  - *Report 2: Chapter 2 - Objectives*
  - *Report 3: Chapter 3 - Natural Environment: Landscape and Earthworks*
  - *Report 4: Chapter 3 - Natural Environment: Ecology and Vegetation*
  - *Report 5: Chapter 4 - Coastal Environment*
  - *Report 6: Chapter 5 - Living Environment*
  - *Report 7: Chapter 6 - Working Environment*
  - *Report 8: Chapter 7 - Rural Environment*
  - *Report 9: Rural Rezoning*
  - *Report 10: Chapter 8 - Open Space*
  - *Report 11: Chapter 9 - Hazards*
  - *Report 12: Chapter 10 - Historic Heritage*

- *Report 13: Chapter 11 - Infrastructure, Services and Associated Resources Use: Network Utilities and Services*
- *Report 14: Chapter 11 - Infrastructure, Services and Associated Resources Use: Access and Transport*
- *Report 15: Chapter 11 - Infrastructure, Services and Associated Resources Use: Community Facilities*
- *Report 16: Chapter 12 - General District-wide Provisions (including Amateur Radio)*

The Overview Report sets out the structure of each report as follows:

*“Each of the reports is structured in the following four parts:*

**Part A**

*This section is factually based with no evaluation. It outlines procedural matters as well as acknowledging the RMA statutory requirements that direct and guide our subsequent evaluation. For contextual reasons, it outlines the role of the PDP Chapter which the report covers; summarising the content and purpose of the Chapter. Essentially this background section provides a factual context for our consideration of the issues raised in submissions (Part B of each report). This section also contains a summary of the submissions and records and acknowledges the submitters that prepared evidence and presented to us. We provide a brief account of the hearing process itself and our subsequent deliberations. Where relevant, procedural matters such as minutes, directions, conferencing and caucusing are also referenced in this part of the report.*

**Part B**

*The second part of each report is structured around the main issues raised in submissions, and where relevant, summarises the evidence / statements presented at the hearing. This part of the report is evaluative and records the results of our deliberations on substantive matters.*

**Part C**

*This part of each report acknowledges the statutory requirements and records our evaluation of the PDP provisions against the relevant sections of the RMA, as well as all other relevant documents prepared under the RMA, in reaching our recommendations. Where there is other relevant legislation that we must have regard to, such as the Heritage New Zealand Pouhere Taonga Act 2014, any discussions of the relevant legislation is contained in this part of the reports.*

**Part D**

*In each report we conclude with a summary of our recommendations, having had regard to the necessary statutory considerations that underpin our evaluation.*

*Each report takes a lead from the Objectives recommended in the Chapter 2 Report. Other than that, each report is largely self-contained on all matters relevant to the Chapter it is reporting on. In some instances, however, cross references to relevant content in other reports are provided where necessary; for example, to illustrate a point about how a rule gives effect to a particular*

*policy or to reference a particular point about the rationale for consistency in provisions across the Plan as a whole<sup>4</sup>.”*

- 13 The changes that the Panel is recommending to the Proposed District Plan (over and above those recommended in the S42A Reports and adopted by the Hearings Panel) are set out in the Panel's Recommendations for each chapter. As noted above there are 16 chapter reports.
- 14 In addition the Overview Report sets out the Panel's approach to the hearings stating: *“Our approach to the hearings was based on ensuring that every submitter who wished to be heard was given every opportunity to outline their concerns, whether calling expert evidence or not.”<sup>5</sup>* . The main drivers of the Panel's recommendations on objectives, policies, methods and rules, subject to the specific requirements and tests set out in the RMA, was the demonstration of:
- Cogent reason(s) , where possible supported with actual examples;
  - The Council's S32 evaluation;
  - Requirements of another RMA Plan or Policy Statement, or relevant enactment;
  - Proposed objectives and policies or rules being *ultra vires*;
  - The Council's S.42A Report/S.32 evaluation and in the case of Variation 1 the S.32AA Further Evaluation;
  - The Panels own S32 and 32AA Further Evaluation
- 15 In terms of “reasons” for the decisions, where the Panel has adopted the Section 42A discussion and recommendation in its decision, reference is made to the specific Section 42A report. Where the Panel has made a change from the Section 42A recommendations the Panel's report includes a new recommended decision with reasons to support that change.
- 16 As noted above the Council at its meeting on 11 August 2015 received a report on the Proposed District Plan – Potential Urban Tree Variation. At that meeting the Council resolved the following:

*That Council request staff to prepare a Variation to the Proposed District Plan relating to trees on urban allotments as defined in the Resource Management Act that:*

- a. identifies and schedules trees on urban allotments that are within ecological sites in the Proposed District Plan;*
- b. amends the rules relating to protected trees in urban areas, including notable trees, to enable trimming of trees in accordance with New Zealand Arboricultural Association Best Practice Guideline on Amenity Tree Pruning Version 3 April 2011 to be undertaken as a permitted activity.*

*That a schedule of additional individual or groups of trees be compiled that the amended rules shall apply to. The schedule is to individually list and protect only the non-planted trees from the 2010 database that have biodiversity values of 9 and 10. These trees are to be limited to the species listed in Appendix 2 of report SP-15- 1666.*

<sup>4</sup> Extract from page 2-3 of Hearings Panel Report and Recommendations on the Proposed Kāpiti Coast District Plan 2012 – Overview Report.

<sup>5</sup> Page 10 of Hearings Panel Report and Recommendations on the Proposed Kāpiti Coast District Plan 2012 – Overview Report.

*That the proposal to incorporate New Zealand Arboricultural Association Best Practice Guideline on Amenity Tree Pruning version 3 April 2011 be publicly notified for comment in accordance with Clause 43 of Part 3 of the First Schedule to the Resource Management Act 1991.*

*That a package of non-regulatory measures be developed for Council's future approval in relation to protected urban trees. This shall include consideration of:*

- a. advice on best practice management of trees*
- b. discounted fees and charges; and*
- c. financial assistance with maintaining protected urban trees.*

- 17 The Panel's Recommendations Report 4 includes specific recommendations in relation to Variation 1 Urban Tree Variation.

## **CONSIDERATIONS**

### **Legal considerations**

- 18 As set out in paragraph 6 and 7 above, the Council has delegated the Hearing Panel authority to consider all submissions.
- 19 Simpson Grierson has reviewed the recommendations set out below in paragraphs 31-36.

### **Financial considerations**

- 20 There will be some costs associated with the implementation of the "Decisions Version" of the Plan. This will include printing costs and the development of an E-Plan. These costs along with provision for appeals to the decisions are provided for within existing budgets.

### **Tāngata whenua considerations**

- 21 The Tāngata Whenua District Plan Review Working Party was established in 2010. The mandate of the working party was to review all aspects of the District Plan on behalf of Te Whakaminenga o Kāpiti and recommend the direction for iwi policy. An outcome of this was the report Te Haerenga Whakamua.
- 22 Te Ohu Taiao was established by Te Whakaminenga o Kāpiti following the establishment of the working party to provide further iwi input into the Proposed District Plan process.

## **SIGNIFICANCE AND ENGAGEMENT**

### **Significance policy**

- 23 Whilst this policy decision has a high level of significance for Council and the community the Resource Management Act 1991 mandates a specific engagement process that Council has followed rather than the process set out in the Significance and Engagement Policy.

## Consultation already undertaken

- 24 As set out in the Overview Report and the separate Panel Reports and Recommendations the process of the Proposed District Plan has involved years of consultation. As highlighted in the background above the process of consultation undertaken through the process has been extensive. The Overview Report also outlines that a full year of hearings were undertaken between April 2016 – April 2017 involving 22 hearings over 41 hearing days with a total of 218 submitters presenting to the hearing panel.

## Engagement planning

- 25 In accordance with the requirements of Schedule 1, Clause 10 and 11 of the RMA, Council's decisions will be publicly notified on 22 November 2017. This will allow staff time to update internal and external systems (including online information), print paper copies, and to prepare and send letters and emails to all those who made submissions and further submissions on the Proposed District Plan following the Council decision on 9 November 2017.
- 26 If the Council approves the Panel's recommendations, then after public notification of the decision there continues to be a transition period between the Operative District Plan and the Proposed District Plan. The rules in both plans will have legal effect initially. The rules in the Proposed District Plan will be treated as operative, and the equivalent rules in the Operative District Plan as inoperative, if either no appeals are lodged in relation to the relevant rules, or once the appeals are resolved.
- 27 To ensure that Council is informed, any appeals will be presented to the Council once they are lodged.

## Other considerations

- 28 As with any new planning instrument there will be a period of change and uncertainty for practitioners and there may be implementation issues that emerge that need to be dealt with (for example, via practice or advice notes or plan changes).
- 29 Staff have developed a communications and training plan for both internal staff and external Plan users that will be adapted as required. Hill Young Cooper (a Planning Consultancy firm) has been engaged to assist with the implementation of the Proposed District Plan from November 2017 through to February 2018. Staff will also be working closely with Council's Communications team through this process.
- 30 Staff are also working towards having a Decisions Version of the Proposed District Plan as an E-Plan available on-line early in 2018.

## RECOMMENDATIONS

- 31 That the Council extends the appointment of:
- (i) Diane Ammundsen as Independent Hearing Commissioner and
  - (ii) Councillor Mike Cardiff as an Elected Member Hearing Commissioner
- for the Proposed District Plan until the 30 November 2017.
- 32 That the Council receives this report SP-17-357 Council Decisions on Submissions to the Proposed Kapiti Coast District Plan and Variation 1 Urban Tree Variation and the Overview Report.
- 33 That the Council receives the 'Hearing Panel Reports and Recommendations' Reports 1-16 containing the 'recommended decision', prepared under delegated authority pursuant to sections 34(1) and 34A of the Resource Management Act 1991, for the hearing of submissions and further submissions on the Proposed Kapiti Coast District Plan 2012 and Variation 1 – Urban Tree Variation.
- 34 That pursuant to Schedule 1 to the Resource Management Act 1991, the Council adopts the recommendations and reasons in the Hearing Panel Recommendation Reports 1-16.
- 35 That the Council publicly notifies its decisions on submissions and further submissions (contained within the Panel Reports and Appendices 1 and 2 to those 16 reports) and serves a copy of the decision on all submitters and further submitters.
- 36 That Council releases a version of the Proposed Kapiti Coast District Plan as Amended by Decisions on 22 November 2017 incorporating all changes from the Hearing Panel Reports and Recommendations including the consequential changes set out in Appendix 1 of the reports.

<b>Report prepared by</b>	<b>Approved for submission</b>	<b>Approved for submission</b>
Nicki Williams	Wayne Maxwell	Sarah Stevenson
<b>Manager Research, Policy and Planning</b>	<b>Group Manager Corporate Services</b>	<b>Group Manager Strategy &amp; Planning</b>

## **ATTACHMENT**

### **Appendix 1**

The Overview Report; and

Report 1 – 16: The Hearing Panel 'Reports and Recommendations on the Proposed Kapiti Coast District Plan 2012' including:

- Appendix 1 comprising the tracked change version of the PDP - Volume 1 Plan, Volume 2 Appendices and Volume 3 Maps; and
- Appendix 2 which is the Recommendations on submissions and further submissions.

[www.kapiticoast.govt.nz/panel-recommendations-9november17](http://www.kapiticoast.govt.nz/panel-recommendations-9november17)

### **Appendix 2**

Copies of the emails from D Ammundsen and Cr M Cardiff sent to A Aburn.

## Nicki Williams

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**From:** Alistair Aburn <Alistair@urbanp.co.nz>  
**Sent:** Monday, October 30, 2017 3:14 PM  
**To:** Nicki Williams  
**Subject:** FW: Sign Off

Hi Nicki

Commissioner Ammundsen's email.

Warm regards  
Alistair

Alistair Aburn

ph: 04 474 4111  
Level 5, 82 Willis Street  
PO Box 9042, Wellington  
New Zealand

-----Original Message-----

From: Diane Ammundsen [<mailto:diane.ammundsen@kapiti.govt.nz>]  
Sent: Sunday, 30 July 2017 2:23 a.m.  
To: Alistair Aburn  
Subject: Sign Off

Hi Alistair,  
I confirm that I have read all the Recommendation Reports 1-18 sent to me and I confirm that I am in agreement with the conclusions reached and the recommendations made. I do accept that there will be some final editing-type changes made.

Regards,  
Diane Ammundsen  
Commissioner  
29 July 2017

Sent from my iPhone

## Nicki Williams

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**From:** Alistair Aburn <Alistair@urbanp.co.nz>  
**Sent:** Monday, October 30, 2017 3:13 PM  
**To:** Nicki Williams  
**Subject:** FW: RE PDP Sign Off

Hi Nicki

Commissioner Cardiff's email.

Warm Regards  
Alistair

Alistair Aburn

ph: 04 474 4111  
Level 5, 82 Willis Street  
PO Box 9042, Wellington  
New Zealand

-----Original Message-----

From: Mike Cardiff [<mailto:cardiffcopartnership@clear.net.nz>]  
Sent: Tuesday, 1 August 2017 12:41 p.m.  
To: Alistair Aburn  
Subject: RE PDP Sign Off

Hi Alistair.

I confirm that I have read the Recommendation Reports 1-18 sent to me and I confirm that I am in agreement with the conclusions reached and recommendations made.  
I acknowledge that there will still be some final editing changes that will need to be made.

Regards.

Mike Cardiff  
Commissioner  
01 August 2017

\_\_\_\_\_ Information from ESET NOD32 Antivirus, version of detection engine 15839 (20170731) \_\_\_\_\_

The message was checked by ESET NOD32 Antivirus.

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